



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

AMENDED DECISION

MRA/150000

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on July 23, 2013, at Port Washington, Wisconsin. A Decision was issued on August 30, 2013. On September 6, 2013, the Petitioner filed a request for rehearing based on an error of fact. Pursuant to Wisconsin Administrative Code § HA 3.10(1), I am amending the decision based on my own motion to correct an error.

The issue for determination is whether the agency properly determined the community spouse income allocation of \$1,870.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Anne McIntyre
2675 N Mayfair Rd Suite 420
Wauwatosa, WI 53226

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County. He was admitted to Cedar Springs Nursing Home in October, 2012. He has a community spouse, ST.
2. On January 22, 2013, the Petitioner applied for Medical Assistance (MA) requesting backdated coverage to October 1, 2012. The application was approved on March 1, 2013 with a patient liability of \$155.33/month.
3. The Petitioner gross monthly income includes \$2,183.90 from Social Security, \$1,893.70 from a retirement annuity and \$91.84 from a retirement policy. ST's gross monthly income is \$820.61 from Social Security.
4. In April, 2013, the agency received a report that the Petitioner's income from a retirement account would increase effective May 1, 2013. Based on this report, on April 15, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his monthly cost share would increase to \$2,074.22 effective May 1, 2013.
5. On June 10, 2013, the agency issued a Notice of Decision to the Petitioner informing him that effective July 1, 2013, his monthly cost share would decrease to \$2,020.39.
6. ST's monthly expenses are \$3,920.97 as detailed below:

Medicare Part B premium	\$ 104.90
Rent	\$1,450.00
Electric	\$ 100.00
Cell phone	\$ 90.16
Cable	\$ 121.00
Renter's Insurance and	
Umbrella Insurance	\$ 24.53
Car Insurance	\$ 40.54
Car maintenance	\$ 50.00
Gas	\$ 80.00
Groceries	\$ 300.00
Newspaper subscription	\$ 31.85
Miscellaneous Household	\$ 200.00
Out-of-pocket Medical	\$ 100.00
Dental Care	\$ 150.00
Credit Cards	\$ 918.00
Accountant Fees	\$ 50.00
Legal Bills	\$ 110.00
7. On June 14, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance is \$2,585 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, Appendix 18.6.2. and update in Operations Memo No. 13-17. The policy further allows for an increase in this allocation for excess shelter costs. In this case, ST has excess shelter costs that entitle her to an allocation of \$2,841. The institutionalized person may divert some of his income to his community spouse rather than contributing to his own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance determined by the agency. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the institutionalized person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

- (c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c). Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. The MA Eligibility Handbook states that a court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated. MA Handbook, § 18.6.2.

Because the spousal allocation is to meet necessary and basic maintenance needs, I am not allowing an allocation for ST's cable and for the newspaper subscription. This decreases monthly expenses to \$3,768.12. However, with regard to credit card debt, the evidence shows that this debt has accumulated since 2007 when the Petitioner began developing Alzheimer's disease. The minimum payments total \$918/month which covers little more than the interest charges. The credit card statements submitted at the hearing demonstrate that ST is not using the cards for new purchases in an effort to decrease the debt. The total outstanding credit card debt is \$33,170.32. It makes sense for the Petitioner to pay as much toward decreasing this debt as possible. Making minimum payments of interest only charges does nothing to decrease the debt. If the Petitioner doubles the minimum payment, her monthly credit card expense is \$1,836 increasing her monthly expenses to \$4,686.12. The Petitioner's total income available for allocation to ST is \$3,875.54 (\$4,169.44 gross monthly income - \$45 personal needs allowance - \$248.90 insurance premiums). If all of Petitioner's available income is allocated to ST, with her monthly income of \$820.61, she will have income of \$4,696.15 which will allow her to meet her monthly necessary and basic expenses.

CONCLUSIONS OF LAW

That Petitioner has demonstrated that a community spouse income allocation in the amount of \$3,875.54 is warranted effective May 1, 2013.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to allow a spousal allocation of \$3,875.54 per month effective May 1, 2013. The agency shall take this action within 10 days of the date of this Order.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of September, 2013

\s

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 17, 2013.

Ozaukee County Department of Social Services
Division of Health Care Access and Accountability
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